

PATENT
674509A-2001**REMARKS**

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the remarks and amendments herein.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-32 are now pending in this application. Claims 3, 9 and 23 have been amended, and claim 33 has been canceled, without prejudice, without dmission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments to the claims and the remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments and remarks are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. THE ART REJECTIONS ARE OVERCOME

Claims 1, 3 and 16 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Erciyes et al. Claims 1, 3, 16 and 30-32 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Erciyes et al. The rejections are respectfully traversed.

Applicants respectfully reminds the Examiner that a two-prong inquiry must be satisfied in order for a Section 102 rejection to stand. First, the prior art reference must contain all of the elements of the claimed invention. See *Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure of the claimed invention. See *Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990).

The Office Action states that Erciyes et al. teaches the separation of glycerides contained in a mixture of triglycerides via fractionation the mixture, wherein the glycerides are separated according to temperature, with triglycerides specifically separated out at temperatures above 200°C.

In contrast, the present invention does not pertain to the separation of triglycerides from glycerides. Rather, the present invention is directed towards the separation of different kinds of triglycerides, i.e., mono-, di- and trilog triglycerides. Thus, in the present invention the starting

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mixture contains only triglycerides whereas Erciyes et al., is directed to the separation of monoglycerides, diglycerides and triglycerides. Indeed, Erciyes is silent as to the separation of different kinds of triglycerides.

As Erciyes clearly fails to contain all the elements of the claims, most notably any teaching or suggestion of the separation of different kinds of triglycerides, the rejection cannot stand. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

The Examiner respectfully reminded that for a Section 103 rejection to be proper, there must be some prior art teaching which would have provided the necessary incentive or motivation for modifying the reference teachings to arrive at the claimed invention. In re Laskowski, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); In re Obukowitz, 27 U.S.P.Q. 2d 1063 (BOPAI 1993). Further, the Examiner is respectfully reminded that "obvious to try" is not the standard under 35 U.S.C. §103. In re Fine, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). And, as stated by the Court in In re Fritch, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification." Also, the Examiner is additionally respectfully reminded that for the Section 103 rejection to be proper, both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure. In re Dow, 5 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1988).

Furthermore, the Examiner is also respectfully reminded that MPEP 2143.01 mandates that for a Section 103 rejection, there must be some suggestion or motivation to modify reference teachings, and, that MPEP 2143.02 further mandates that for a section 103 rejection, there must be a reasonable expectation of success.

The Office Action further alleges that the claims differ from Erciyes by stating that the mono-, di-, and tri-glycerides are long chained. Again, Applicants respectfully submit that the Examiner has misinterpreted the present claims, as the present claims are not directed towards the separation of monoglycerides, diglycerides and triglycerides. Rather, the present invention is directed towards the separation of different kinds of triglycerides, i.e., mono-, di- and trilog triglycerides. As Erciyes is silent as to the separation of different kinds of triglycerides, there is

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no teaching or suggestion in Erciyes that would lead one of skill in the art to modify Erciyes to arrive at the present invention.

The Office Action further states that “[a]s shown by Erciyes et al. the determining factor in separation via fractionation is based on the temperature and number of acyl moieties attached to the triglycerol backbone. The mere use of different starting materials...in a convention process to produce the product one would expect therefrom does not render the process unobvious.” Office Action at 3. Applicants respectfully submit that in fact, Erciyes refers to “the number of long chain acyl moieties attached to the triglycerol backbone.” For example, on page 193 of Erciyes, the composition of the used linseed oil is described. The linseed oil sample contained 17.58% monoglycerides, 26.77% diglycerides and 55.65% triglycerides. Monoglycerides and monolong triglycerides (i.e., triglyceride containing one long fatty acid chain) are not members of the same class of materials.

As Erciyes clearly provides no teaching or suggestion of separation of different kinds of triglycerides, the obviousness rejection cannot stand. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

III. THE REJECTIONS UNDER 35 U.S.C. §112 ARE OVERCOME

Claims 3-6, 9-10, 23 and 33 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The rejection is respectfully traversed.

Claim 3 was considered indefinite for reciting improper Markush language. Claim 9 was considered indefinite for lacking a period. Claim 23 was considered to lack antecedent basis as to “the distillation column”. Applicants respectfully submit that claims 3, 9 and 23 have been amended herein such that the rejections are now moot.

Claim 33 was also considered indefinite due to inclusion of the phrase “is done in response to the customer requirements.” Claim 33 has been cancelled herein, rendering the rejection moot.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §112, second paragraph, are respectfully requested.

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If any issue remains as an impediment to allowance, we respectfully request a personal interview with the Examiner, prior to issuance of any paper other than a Notice of Allowance; and, pursuant to this request the Examiner is also invited to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION

In view of the remarks and enclosures herewith, the application is now in condition for allowance. Consequently, reconsideration and withdrawal of the rejections, and prompt issuance of a notice of allowance, are respectfully requested.

Respectfully submitted,
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